

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 309

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

AN ACT

RELATING TO CONSERVATION; ENACTING THE LAND, WILDLIFE AND CLEAN  
ENERGY ACT; CREATING A BOARD; PROVIDING FOR LEGISLATIVE  
OVERSIGHT; CREATING FUNDS; AUTHORIZING THE ISSUANCE OF BONDS;  
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Land, Wildlife and Clean Energy Act".

Section 2. PURPOSE.--The purpose of the Land, Wildlife  
and Clean Energy Act is to fund projects, conservation  
easements and fee land acquisitions in order to protect the  
land base available for working farms or ranches, forests or  
watersheds, natural areas, outdoor recreation and trails and  
wildlife habitat; to fund land and habitat restoration and  
management projects; and to fund clean energy development

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1 projects.

2 Section 3. DEFINITIONS.--As used in the Land, Wildlife  
3 and Clean Energy Act:

4 A. "authority" means the New Mexico finance  
5 authority;

6 B. "board" means the land, wildlife and clean  
7 energy board;

8 C. "clean energy development project" means a  
9 project that increases:

10 (1) energy efficiency;

11 (2) the conservation of energy; or

12 (3) the production of energy using biomass,  
13 geothermal, hydrogen, solar or wind power;

14 D. "conservation project" means preservation,  
15 rehabilitation, restoration or management activities directed  
16 at:

17 (1) natural areas;

18 (2) working farms or ranches;

19 (3) wildlife or its habitats;

20 (4) outdoor recreation areas and trails;

21 (5) forests or watersheds; or

22 (6) other ecologically damaged lands;

23 E. "department" means the energy, minerals and  
24 natural resources department;

25 F. "director" means the director of the board;

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1           G. "Indian tribe" means a federally recognized  
 2 Indian nation, tribe or pueblo located wholly or partially in  
 3 New Mexico; a governmental unit or wholly owned enterprise of  
 4 such an Indian nation, tribe or pueblo; or a consortium of  
 5 those Indian tribes, nations, pueblos or entities;

6           H. "public or private clean energy development  
 7 agency" means a governmental body or a private not-for-profit  
 8 charitable corporation or trust authorized to do business in  
 9 New Mexico that has tax-exempt status under the federal  
 10 Internal Revenue Code of 1986 and is authorized to conduct  
 11 clean energy development projects;

12           I. "public or private conservation agency" means a  
 13 governmental body or a private not-for-profit charitable  
 14 corporation or trust authorized to do business in New Mexico  
 15 that has tax-exempt status as a public charity under the  
 16 federal Internal Revenue Code of 1986, and the power to  
 17 acquire, hold or maintain land or interests in land; and

18           J. "qualified entity" means a state agency; a  
 19 political subdivision of the state; an Indian tribe; a school  
 20 district; a state educational institution named in Article 12,  
 21 Section 11 of the constitution of New Mexico; or a public or  
 22 private conservation or clean energy development agency.

23           Section 4. LAND, WILDLIFE AND CLEAN ENERGY BOARD  
 24           CREATED--APPOINTMENTS--TERMS.--

25           A. The "land, wildlife and clean energy board" is  
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1 created and is administratively attached to the department.

2 B. The board consists of fourteen members as  
3 follows:

4 (1) the secretary of energy, minerals and  
5 natural resources or the secretary's designee;

6 (2) the director of the New Mexico department  
7 of agriculture or the director's designee;

8 (3) the director of the department of game and  
9 fish or the director's designee;

10 (4) the state engineer or the state engineer's  
11 designee; and

12 (5) ten public members appointed by the  
13 governor with the advice and consent of the senate, with one  
14 representative from each of the following occupations,  
15 interests or activities:

16 (a) wind, solar or biomass energy;

17 (b) energy conservation and efficiency;

18 (c) farm production; provided that the  
19 representative's primary occupation is farm production;

20 (d) municipalities and counties;

21 (e) land or natural area protection  
22 trust;

23 (f) wildlife management and  
24 conservation;

25 (g) tribal land conservation;

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1 (h) community land grants and acequias;

2 (i) livestock or dairy production;

3 provided that the representative's primary occupation is  
4 raising livestock or in dairy production; and

5 (j) hunting or fishing.

6 C. Appointed members of the board shall serve  
7 staggered terms of four years; provided that at the time of  
8 making the first appointments, the governor shall designate  
9 one-half of the appointed board members' first terms as being  
10 two years and one-half of the members' first terms as being for  
11 four years so that the terms of no more than five appointed  
12 members will expire at the same time. The governor shall  
13 appoint the chair of the board. A vacancy on the board shall  
14 be filled for the remainder of the term of that appointee.  
15 Appointed members of the board shall receive reimbursement for  
16 expenses incurred in the performance of their duties pursuant  
17 to the Per Diem and Mileage Act and shall receive no other  
18 compensation, perquisite or allowance.

19 Section 5. LAND, WILDLIFE AND CLEAN ENERGY BOARD--  
20 POWERS--DUTIES.--

21 A. The board shall employ a director, who shall  
22 hire personnel, not to exceed five full-time employees or the  
23 equivalent, and contract for services necessary to carry out  
24 the purposes of the Land, Wildlife and Clean Energy Act. The  
25 director shall develop and implement plans and a budget as

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1 directed by the board.

2 B. The department shall be reimbursed for costs  
3 incurred for any administrative support provided to the board  
4 and the director. The board shall have an independent audit of  
5 the board's finances conducted annually.

6 C. The board shall promulgate rules:

7 (1) for the management of board-funded  
8 projects;

9 (2) to govern the application and selection  
10 process for projects;

11 (3) to ensure appropriate public notice of  
12 proposed actions;

13 (4) to provide certification requirements of  
14 projects to be funded; and

15 (5) to otherwise guide the work of the board  
16 and carry out the provisions of the Land, Wildlife and Clean  
17 Energy Act.

18 D. The board shall evaluate each proposed project  
19 using the following criteria:

20 (1) the project's potential for conserving  
21 land or wildlife or increasing clean energy development;

22 (2) whether the project leverages or matches  
23 other public or private investment in, or in-kind support of,  
24 conservation and clean energy development projects, including  
25 allowing local governments to match funding by adopting open

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1 space and agriculture protection policies;

2 (3) the impacts of the project, including  
3 benefits or avoidance of waste;

4 (4) the expertise of the qualified entity  
5 proposing the project in conducting conservation or clean  
6 energy development projects;

7 (5) the project's potential to increase  
8 collaboration among the state and its political subdivisions,  
9 other public and private conservation and clean energy entities  
10 and landowners and other interested individuals or entities;

11 (6) an appropriate balance of funding of  
12 conservation projects and clean energy development projects  
13 over the time that reflects the board's strategic plan;

14 (7) for conservation projects:

15 (a) the project's support of private  
16 ownership of working farms and ranches;

17 (b) the project's assistance to private  
18 landowners in land and wildlife conservation;

19 (c) the project's potential for  
20 conserving land and water in association with ecosystem or  
21 natural area protection or habitat enhancement; or

22 (d) the project's potential to improve  
23 public access to land, water, wildlife and natural areas and  
24 outdoor recreation opportunities, including hunting and  
25 fishing; and

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1 (8) for clean energy development projects:

2 (a) how the project will increase energy  
3 efficiency or conservation; or

4 (b) how the project will increase energy  
5 production using solar, biomass, geothermal, hydrogen or wind  
6 power.

7 E. Projects involving acquisition of land or water  
8 rights shall respect private property rights with a preference  
9 for leaving land and water rights in private ownership through  
10 purchase of negotiated conservation easements or voluntary  
11 access agreements to ensure public benefit.

12 F. No provision of the Land, Wildlife and Clean  
13 Energy Act shall be construed to alter state law regarding  
14 access to the commercial development of, extraction from or  
15 status of a mineral estate.

16 G. The board may:

17 (1) administer the land, wildlife and clean  
18 energy fund and make grants and loans from the fund for  
19 projects authorized by the Land, Wildlife and Clean Energy Act;

20 (2) acquire and manage, or assign management  
21 of, whole or partial interests in land or water rights,  
22 including easements;

23 (3) make grants or loans to or otherwise  
24 contract with qualified entities for approved conservation  
25 projects and clean energy development projects;

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1 (4) fund wildlife management projects;

2 (5) request the authority to issue  
3 conservation bonds or clean energy bonds to finance eligible  
4 conservation projects or clean energy development projects;

5 (6) apply for, accept and expend funds from  
6 private and public sources; and

7 (7) enter into contracts or agreements with  
8 qualified entities as necessary to achieve the purposes of the  
9 Land, Wildlife and Clean Energy Act.

10 H. The board shall meet at least quarterly, review  
11 proposed conservation projects and clean energy development  
12 projects and, in consultation with the director, select those  
13 projects to be financed with money from the land, wildlife and  
14 clean energy fund or with the proceeds of bonds issued by the  
15 authority for those purposes.

16 I. By October 1 of each year, the board shall issue  
17 an annual report to the legislature and the governor that  
18 includes:

19 (1) a list and description of each project  
20 funded that year and the status of any other ongoing projects;

21 (2) a summary of the board's revenues and  
22 expenses, including a combined balance sheet and statement of  
23 revenue, expenditures and changes in fund balances;

24 (3) the independent auditor's report or  
25 letter;

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1 (4) a summary of the board's five-year  
2 strategy for carrying out the purposes of the Land, Wildlife  
3 and Clean Energy Act;

4 (5) information on how qualified entities may  
5 apply for funding of eligible projects; and

6 (6) an evaluation of the social, economic and  
7 ecological effects of its program.

8 Section 6. CONSERVATION AND CLEAN ENERGY DEVELOPMENT  
9 PROJECTS--LIMITATIONS ON ACQUISITION OF LAND AND WATER  
10 RIGHTS.--

11 A. Land or water rights shall not be acquired for  
12 conservation or clean energy development projects through  
13 condemnation or the exercise of the power of eminent domain nor  
14 for any purpose other than that authorized by the Land,  
15 Wildlife and Clean Energy Act.

16 B. Money in the land, wildlife and clean energy  
17 fund shall not be used to acquire water rights that:

18 (1) are served by or owned by an acequia or  
19 community ditch established pursuant to Chapter 73, Article 2  
20 or 3 NMSA 1978 unless the water rights are acquired by an  
21 acequia or community ditch;

22 (2) are served by an irrigation district  
23 established pursuant to Chapter 73, Article 10 NMSA 1978 or a  
24 conservancy district established pursuant to Chapter 73,  
25 Article 14 NMSA 1978, except through contractual arrangement

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1 with the district board of directors or as a special water  
 2 users association established pursuant to Chapter 73, Article  
 3 10 NMSA 1978;

4 (3) will result in an increase in net  
 5 depletions in the affected river or basin that will create  
 6 cumulative adverse impacts on existing water users, delivery  
 7 systems or compact obligations;

8 (4) cost more than the appraised market value  
 9 to purchase or lease based upon the best available information  
 10 and considering the seniority and the consistent, historic  
 11 beneficial use of the water rights;

12 (5) do not have sufficient seniority and  
 13 consistent, historic beneficial use to effectively contribute  
 14 to the purposes of the Land, Wildlife and Clean Energy Act;

15 (6) have not been adjudicated or licensed by  
 16 the state engineer or do not comply with all state engineer  
 17 rules governing surface and ground water transfer applications  
 18 or that clearly conflict with the state water plan;

19 (7) will be used to authorize the exportation  
 20 of water from one surface drainage basin or declared  
 21 underground water basin to another; or

22 (8) will, upon cessation of use, increase  
 23 depletions to a river or an underground water basin.

24 C. Water rights purchased with money from the land,  
 25 wildlife and clean energy fund or the proceeds of bonds issued

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1 pursuant to the Land, Wildlife and Clean Energy Act shall not  
2 be sold to the United States.

3 D. A conservation project that includes the  
4 purchase of land or an interest in land with a public or  
5 private conservation agency shall, to the extent required by  
6 law, require that title to the land or interest in land be held  
7 by the state or a political subdivision of the state, or by the  
8 private conservation agency and the state, or political  
9 subdivision of the state, as cotenants with an undivided  
10 interest in the land or interest in the land. If the private  
11 conservation agency fails to perform its management, monitoring  
12 or enforcement duties as they relate to a conservation project,  
13 the ownership interest of any land or interest in land  
14 purchased with state funds for that project shall revert to the  
15 participating governmental entity until the interest is  
16 transferred to another private conservation agency chosen by  
17 the owner of the underlying estate, in the case of a  
18 conservation easement, or by the participating government  
19 entity if the land is owned in fee.

20 E. All projects, including the purchase of land,  
21 shall guarantee that the project or land shall be maintained so  
22 as to protect the public health and welfare.

23 F. Conservation projects that reduce the taxable  
24 land base of a political subdivision that is not a partner in  
25 the proposed project shall provide compensation for the

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1 estimated revenue loss based on the land's use at the time of  
 2 purchase to the affected political subdivision from money in  
 3 the land, wildlife and clean energy fund or the proceeds of  
 4 bonds issued pursuant to the Land, Wildlife and Clean Energy  
 5 Act.

6 Section 7. LAND, WILDLIFE AND CLEAN ENERGY FUND--  
 7 CREATION--USE.--

8 A. The "land, wildlife and clean energy fund" is  
 9 created in the state treasury and shall consist of  
 10 distributions made to the fund from the conservation and clean  
 11 energy bonding fund; gifts, grants and donations; other revenue  
 12 credited to the fund; and income from investment of the fund.  
 13 Balances in the fund at the end of a fiscal year shall not  
 14 revert to the general fund. The department shall administer  
 15 the fund on the board's behalf.

16 B. Money in the land, wildlife and clean energy  
 17 fund is appropriated to the board to make loans or grants to,  
 18 or otherwise contract with, qualified entities for conservation  
 19 projects and clean energy development projects specifically  
 20 authorized by law and for expenses necessary to carry out the  
 21 provisions of that act. Disbursements from the fund shall be  
 22 made upon warrants drawn by the secretary of finance and  
 23 administration pursuant to vouchers signed by the chair of the  
 24 board or the chair's authorized representative.

25 Section 8. CONSERVATION AND CLEAN ENERGY BONDING FUND--

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1 CREATED--PLEDGE OF MONEY IN THE FUND--DISTRIBUTION.--

2 A. The "conservation and clean energy bonding fund"  
3 is created as a special fund within the authority. The  
4 authority shall administer the fund as a special account. The  
5 fund shall consist of appropriations by the legislature to  
6 carry out the purposes of the Land, Wildlife and Clean Energy  
7 Act and any other public or private money dedicated to the  
8 fund. The fund's earnings shall be credited to the fund.  
9 Balances in the fund at the end of any fiscal year shall remain  
10 in the fund, except as provided in this section.

11 B. Money in the conservation and clean energy  
12 bonding fund shall be pledged irrevocably by the authority for  
13 the payment of principal and interest on conservation bonds and  
14 clean energy bonds issued pursuant to the Land, Wildlife and  
15 Clean Energy Act. Money in the fund is appropriated to the  
16 authority for the purposes of paying debt service, including  
17 redemption premiums, on the bonds and expenses incurred in the  
18 issuance, payment and administration of the bonds.

19 C. On the last day of January and July of each  
20 year, the authority shall estimate the amount needed to make  
21 debt service payments on the bonds issued pursuant to the Land,  
22 Wildlife and Clean Energy Act, plus the amount that may be  
23 needed for any required reserves, administrative expenses or  
24 obligations coming due during the next twelve months from the  
25 fund, and distribute to the land, wildlife and clean energy

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1 fund any balance in the conservation and clean energy bonding  
2 fund above the estimated amounts; provided that if there are no  
3 bonds issued or outstanding, then distributions from the oil  
4 and gas conservation tax shall be transferred to the land,  
5 wildlife and clean energy fund upon receipt by the authority.

6 D. The bonds issued pursuant to the Land, Wildlife  
7 and Clean Energy Act shall be payable solely from the fund or  
8 such other special funds as may be provided by law and that do  
9 not create an obligation or indebtedness of the state within  
10 the meaning of any constitutional provision. A breach of any  
11 contractual obligation incurred pursuant to the Land, Wildlife  
12 and Clean Energy Act shall not impose a pecuniary liability or  
13 a charge upon the general credit or taxing power of the state,  
14 and the bonds are not general obligations for which the state's  
15 full faith and credit is pledged.

16 E. The state pledges that the conservation and  
17 clean energy bonding fund shall be used only for the purposes  
18 specified in this section and shall first be pledged to pay the  
19 debt service on the bonds issued pursuant to the Land, Wildlife  
20 and Clean Energy Act. The state further pledges that any law  
21 authorizing the distribution of taxes or other revenues to the  
22 fund or authorizing expenditures from the fund shall not be  
23 amended or repealed or otherwise modified so as to impair the  
24 bonds to which the fund is dedicated as provided in this  
25 section.

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1           Section 9. CONSERVATION BONDS AND CLEAN ENERGY BONDS  
2 AUTHORIZED.--

3           A. The authority is authorized to issue and sell  
4 from time to time bonds, known as "conservation bonds" or  
5 "clean energy bonds", at the board's request and in compliance  
6 with the Land, Wildlife and Clean Energy Act and the New Mexico  
7 Finance Authority Act for the purpose of financing conservation  
8 projects or clean energy development projects when the board  
9 has certified the need for the bonds for projects that have  
10 been reviewed by the New Mexico finance authority oversight  
11 committee and specifically authorized by law.

12           B. The net proceeds from the bonds are appropriated  
13 to the board for the purpose of financing conservation projects  
14 and clean energy development projects pursuant to the Land,  
15 Wildlife and Clean Energy Act.

16           C. Each series of bonds shall be issued pursuant to  
17 the provisions of the New Mexico Finance Authority Act, except  
18 as otherwise provided in the Land, Wildlife and Clean Energy  
19 Act.

20           D. The authority may additionally secure the bonds  
21 issued pursuant to this section by a pledge on the money in the  
22 public project revolving fund as determined by the authority.

23           E. The authority may purchase bonds issued pursuant  
24 to this section with money in the public project revolving fund  
25 pursuant to the provisions of Section 6-21-6 NMSA 1978.

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1 Section 10. LAND, WILDLIFE AND CLEAN ENERGY ACT IS FULL  
 2 AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL INVESTMENTS.--

3 A. The Land, Wildlife and Clean Energy Act and the  
 4 New Mexico Finance Authority Act shall, without reference to  
 5 any other act of the legislature, be full authority for the  
 6 issuance and sale of conservation bonds and clean energy bonds,  
 7 which bonds shall have all the qualities of investment  
 8 securities under the Uniform Commercial Code and shall not be  
 9 invalid for any irregularity or defect or be contestable in the  
 10 hands of bona fide purchasers or holders thereof for value.

11 B. Conservation bonds and clean energy bonds are  
 12 legal investments for any person or board charged with the  
 13 investment of any public funds and are acceptable as security  
 14 for any deposit of public money.

15 Section 11. BONDS TAX EXEMPT.--All conservation bonds and  
 16 clean energy bonds shall be exempt from taxation by the state  
 17 or any of its political subdivisions.

18 Section 12. THIRD-PARTY ENFORCEMENT LIMIT--NOTICE OF  
 19 TRANSFER OF PROPERTY.--

20 A. No person shall have a third-party enforcement  
 21 right pertaining to a conveyance made pursuant to the Land,  
 22 Wildlife and Clean Energy Act, except against the state or a  
 23 political subdivision of the state.

24 B. No conservation easement acquired under the  
 25 Land, Wildlife and Clean Energy Act that restricts the transfer

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1 of the conservation easement may be transferred to a third  
2 party without prior legal notice to the current owner of the  
3 underlying property.

4 Section 13. APPROPRIATION.--Ten million dollars  
5 (\$10,000,000) is appropriated from the general fund to the  
6 conservation and clean energy bonding fund for expenditure in  
7 fiscal year 2008 and subsequent fiscal years to carry out the  
8 purposes of the Land, Wildlife and Clean Energy Act. Any  
9 unexpended or unencumbered balance remaining at the end of a  
10 fiscal year shall not revert to the general fund.

11 Section 14. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2007.